THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE S. ANANDA REDDY

Date: 23—09—2005

W.P. No. 16072 of 2005

Between:

M/s. Vijaya Stone Crushers,

Kondakavuru, Guntur District.

…Petitioner.

A n d

The Assistant Commissioner of Commercial Taxes (Int),

Division-II, Guntur and another.

…Respondents.

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

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W.P. No. 16072 of 2005

O R D E R: (per Sri S. Ananda Reddy, J)

This writ petition is filed by the petitioner invoking the jurisdiction of this Court under Article 226 of the Constitution of India seeking declaration that the action of the 1st respondent – the Assistant Commissioner of Commercial Taxes, Division-II, Guntur in obtaining the statement on 13.8.2004 from the manager of the petitioner firm with simultaneous issue of an order on the same day for the purpose of collecting an amount of Rs.1,03,680/- by way of tax and Rs.2,000/- towards compounding fee for the assessment year 2003-04 is illegal and without jurisdiction, apart from contrary to the Full Bench judgment of this Court reported in 2005 (2) ALD 704 and consequently to direct the respondents to refund the amount with interest at 12% from the date of collection of tax till the date of refund.

It is stated that the petitioner is a registered dealer on the rolls of the Assistant Commercial Tax Officer, Narsaraopet both under the APGST and CST Acts and is being assessed by the 2nd respondent herein. The petitioner firm is a dealer engaged in the activity of crushing stones and also selling various stone chips to the registered dealers within the State as well as outside the State. It is stated that the petitioner has done business during the year 2003-04 in the stone chips purchased from registered dealers who paid the tax and as such the sales in the hands of the petitioner are second sales and, therefore, the petitioner is not liable to pay tax. It is further stated that the 1st respondent inspected the business premises of the

petitioner on 5.8.2004 and at the time of inspection neither the Managing Partner nor the other partners of the business firm were available at the premises and taking advantage of the situation the 1st respondent obtained a statement from the Manager of the petitioner firm forcibly and took into custody one ledger book that was available at the business premises. According to the petitioner, the 1st respondent obtained a statement from the Manager of the petitioner firm stating that no AA9 return was filed by the petitioner and that certain stocks were found at the time of inspection which were not properly accounted. Therefore, a show-cause notice dated 10.8.2004 was issued calling upon the petitioner to submit his explanation. It is further stated that though an explanation was filed, without considering the explanation of the petitioner the 1st respondent passed an order on 13.8.2004, stating it to be a provisional assessment. The said provisional assessment is in the form of a proforma whereunder the figures were filled in the blanks and, according to the petitioner, even before the impugned order was passed the respondents have collected the above referred tax as well as penalty and the impugned order was passed only to legalize the amounts already collected and, as such, the said collection was in contravention of the judgment of this Court and, therefore, the impugned order is liable to be quashed with a consequential direction to refund the amount.

Counter affidavit has been filed on behalf of the respondents by the 1st respondent. The stand of the respondents is that a statement was given by one of the partners of the petitioner firm apart from production of the ledger, and the turnover which was

not declared was ascertained only from the accounts of the petitioner basing on the said particulars and basing on the statement of the said partner of the petitioner-firm, the assessment order was passed. It is also the further case of the respondents that the petitioner-firm did not file AA9 return, which fact was admitted, and in fact the petitioner paid the amount of tax as well as the penalty in pursuance of the impugned order passed by the 1st respondent and, therefore, there is no illegality in the order passed by the respondents and it is in conformity with the provisions of the Act.

Heard both sides and the writ petition is disposed of at the admission stage with the consent of the parties without going into the merits of the rival contentions, as the impugned order itself was passed in a printed proforma, which clearly shows that the 1st respondent has not applied his mind. Therefore, it would be appropriate for this Court to set aside the impugned order dated 13.8.2004 with a direction to the respondents-authorities to pass a fresh order after considering the explanation of the petitioner including the contention of the petitioner that the return under AA9 was already filed. The 1st respondent is expected to pass a speaking reasoned order, considering all the objections of the petitioner. In view of the above, this Court is of the opinion that it would not be appropriate to direct the respondents to refund the amount already collected. That the amount already collected shall be subject to the outcome of the order that would be passed by the respondents. The 1st respondent is directed to pass appropriate order after giving reasonable opportunity to the petitioner, within six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly.

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B. Sudershan Reddy, J.

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S. Ananda Reddy, J.

Date: 23—09—2005.

MVB.